

Faulk, Camilla

From: Steve Eckstrom [s_eckstrom@msn.com]
Sent: Thursday, April 28, 2011 10:22 PM
To: Faulk, Camilla
Subject: Proposed CrR 4.11 Recording Witness Interviews

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Clerk of the Supreme Court
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Olympia, Washington 98504-0929

To the Clerk of the Supreme Court:

I am writing to express my strong opposition to the adoption of the proposed new rule CrR 4.11, pertaining to the recording of witness interviews.

I am concerned because there has been no open public debate about the need for this rule change, nor any demonstration that solutions to any problems it addresses are unavailable under existing court rules.

On the other hand, I believe that this proposed new rule threatens to erode the integrity and credibility of criminal justice in this state. It would, in a significant number of cases, add significantly to the trauma experienced by crime victims and discourage their participation in the criminal justice process.

By requiring that victims and witnesses of crime acquiesce in the recording of their interviews with prosecutors and defense attorneys, regardless of their own preferences, the rule essentially exacts a price for the opportunity to seek justice and protection through the criminal courts.

The participation of victims and civilian witnesses in pre-trial interviews is voluntary. As such, they have the ability to negotiate the conditions under which such interviews occur, including the date, time, location, and duration of the interview, the presence of persons to provide support and a sense of security, and whether the interview is electronically or otherwise recorded.

When the witness to be interviewed is the victim of the crime, it is particularly important that he or she retain the power to set the conditions of the interview. Crime is often experienced as the loss or defeat of one's personal power and ability to set and defend boundaries. Criminal justice procedures that provide no choices for victims aggravate this experience of powerlessness and dehumanization, magnify the impact of the crime, and will for many discourage participation in the justice process.

In some cases, victims are particularly reluctant to submit to the electronic recording of an interview because of the emotional content that such recording captures in addition to the factual narrative. Such interviews often require the victim to re-experience the terror, revulsion, or rage triggered by the crime itself. When those powerful feelings surface during the interview and are captured in a medium over which the victim has no control, it increases the victim's sense of exposure and vulnerability. This is especially true if the victim knows the recording will be provided to the defendant, and if submitted as evidence in court, available for public scrutiny.

In cases involving child victims or witnesses, I believe the proposed rule compromise the rights of parents and guardians to look after the interests of their children by taking the option to refuse to

allow recording of pre-trial interviews off the table. It also threatens to undermine investigative practices established over the years to protect both the integrity of the evidence and the health and safety of child witnesses.

Under existing rules, prosecutors and defense attorneys are free to request the permission of victims and witnesses (or their legal guardians, if they are children) to record pre-trial interviews. Some will willingly grant that permission. Others will decide that it is in their best interests to refuse to do so.

Under existing rules, prosecutors and defense attorneys who feel that victims or witnesses are setting unreasonable conditions on their availability for pre-trial interviews may petition trial courts to order depositions.

Under existing rules, victims and civilian witnesses who choose, as we all hope they would, to report crime and participate in the ensuing investigations and judicial proceedings, retain some ability to protect their privacy and their dignity in the process.

Under existing rules, trial courts can and do strike a proper balance between the rights of private individuals who are victims and witnesses of crime and the legitimate requirements of justice in criminal cases.

I see nothing in the existing rules that justifies the introduction of new provisions that cause further trauma to victims and witnesses, discourage their participation in the justice process, create confusion about their rights and obligations, and devalue their contribution to justice and community safety. I urge you to finally and unequivocally reject the proposed CrR 4.11.

Respectfully submitted,

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